

GAO

Briefing Report to the Chairman,
Subcommittee on Oversight of
Government Management, Committee
on Governmental Affairs, U.S. Senate

August 1989

COMMERCE BUSINESS DAILY

Classification of Procurement Notices



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The Honorable Carl M. Levin
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This briefing report responds to your December 15, 1988, request that we review the accuracy of classifications of contracting opportunities published in the Commerce Business Daily (CBD). On March 1, 1989, we briefed the Subcommittee on our survey findings and agreed to provide a written report summarizing the briefing.

Government agencies notify the public of proposed contract actions and contract awards through the CBD. We examined 2,413 procurement notice synopses published in the CBD to see if they were placed under the appropriate headings.

RESULTS IN BRIEF

We determined that about 6 percent of the 2,413 synopses listed in four editions of the CBD were misclassified. The CBD editorial office agreed with our findings. For many years, the CBD editorial staff routinely corrected erroneous classifications submitted by the 4,000 government procurement offices. Since September 1, 1988, however, it has not had the authority to do so. This authority was withdrawn because a Comptroller General decision found misclassification to be grounds for a bid protest, which the procurement offices rather than the CBD would have to defend.

The Department of Commerce has been aware of the misclassification problem and has issued a guide for preparing synopses to help contracting officers accurately classify proposed procurement actions. Commerce also is replacing the present classification system with one that is more detailed and descriptive.

Details on our objectives, scope, and methodology and the results of our analysis are provided in Appendix I. We discussed this report with Department of Commerce officials, who generally agreed with our findings.

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As agreed with the Subcommittee, unless you publicly announce the contents of the report earlier, we plan no further distribution until 30 days after the report date. At that time, we will send copies to the Secretary of Commerce and to other interested parties and will make copies available to others upon request.

The principal contributors to this report were Kimberly McGregor, Evaluator, and Paul O'Neill, Assistant Director. If you have any questions, please contact me at 275-8676.

Sincerely yours,

for Richard W Caradine
L. Nye Stevens
Director, Government Business
Operations Issues

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ABBREVIATIONS

ADP	Automatic Data Processing
<u>CBD</u>	<u>Commerce Business Daily</u>
CICA	Competition in Contracting Act of 1984
DOC	Department of Commerce
FAR	Federal Acquisition Regulation

GPO Government Printing Office
GSA General Services Administration
NASA National Aeronautics and Space Administration
NSN National Stock Number

MISCLASSIFICATION OF NOTICES IN THE
COMMERCE BUSINESS DAILY

The Chairman of the Senate Governmental Affairs Subcommittee on Oversight of Government Management asked us to investigate whether the effectiveness of procurement notices placed in the Commerce Business Daily was being undermined by their classification into the wrong categories of supplies and services. This issue had initially been brought to his attention through a constituent inquiry.

We reported to the Subcommittee in a March 1, 1989, briefing that we had found that misclassification was a problem. We also found that the Department of Commerce recognized this problem and was trying to improve the accuracy of CBD notices. The Subcommittee asked that we summarize the contents of the briefing in a report.

OBJECTIVES, SCOPE,
AND METHODOLOGY

Our principal objective was to determine whether the CBD contained misclassified contracting opportunity notices. We also examined the effect of inaccurately classified notices on competition for contracts.

We did our work from February through April 1989 in accordance with generally accepted government auditing standards. To meet our objectives, we did the following:

- We reviewed all (2,413) procurement notice synopses in four editions of the CBD--two editions that contained the four synopses that prompted the request (October 31 and November 2, 1988), and two editions picked arbitrarily (February 15 and 16, 1989). We then compared the classification of the synopses with classification guidance in the Federal Acquisition Regulation (FAR). Our results are not projectable to all CBD editions, since our selection of editions to review was arbitrary, not random.
- We met with Department of Commerce officials who were knowledgeable about CBD classification to obtain background information on CBD classification and to review our initial determinations that certain synopses were incorrectly classified.
- We met with three private firms in the Washington, D.C., area that provide CBD information to subscribers to determine

whether the services they offer are adversely affected by misclassifications in the CBD.

-- We reviewed protests to us stemming from misclassifications in the CBD to determine the potential effect of misclassification on the requirements for full and open competition.

BACKGROUND

The CBD, which is published by the Department of Commerce, is the means by which government agencies notify the public of proposed U.S. government procurements, contract awards, sources sought, surplus property sales, and other related notices. According to the FAR, the main purposes of the CBD notice are to improve small business access to acquisition information and to enhance competition by identifying contracting and subcontracting opportunities.

The FAR governs advertising in the CBD by (1) providing guidelines to agencies on the preparation and transmittal of procurement synopses and (2) specifying the classification codes used in synopses to identify and compartmentalize broad procurement categories. The Competition in Contracting Act (CICA) of 1984 placed a greater burden on agencies to take positive, effective steps towards ensuring that all responsible sources are permitted to compete. Title VII Subtitle C, Section 2732 of CICA stipulates procedures for publicizing procurement notices.

A typical edition of the CBD contains approximately 1,000 notices classified by 97 codes specified in the FAR. Services are classified under 19 single-letter codes and supplies are classified under 78 two-digit codes. Appendix II lists the FAR classification codes for services and appendix III lists the FAR classification codes for supplies.

PUBLISHING OF THE CBD

More than 4,000 federal procurement offices announce and advertise in the CBD. According to DOC officials, procurement offices generally send synopses to the CBD editorial office, although some offices transmit notices directly to the photocomposition contractor, Pulitzer Newspapers. Pulitzer Newspapers gives the final version of the CBD to the Government Printing Office (GPO) for printing. After printing, GPO mails copies of the CBD to over 43,000 subscribers, who each pay GPO over \$200 a year for the service.

The Department of Commerce also sells the CBD in electronic form. Private firms who purchase it tailor the data to suit the specific procurement interests of their customers. For example, one of these private firms, United Communications, allows subscribers to interact on-line with its data base and to select those synopses that fit their needs.

HOW CBD NOTICES ARE CLASSIFIED

In the past, according to DOC officials, the CBD editorial office staff ensured that classification codes for CBD synopses were correct. While contracting officers assigned codes to their procurement notices before sending them to be included in the CBD, the editorial staff had the authority to change these codes if they were incorrect and to assign codes when none or several codes were assigned by the contracting officer.

In 1986, the National Aeronautics and Space Administration (NASA) requested that the CBD editorial office staff refrain from changing synopsis codes and data submitted by NASA. Unilaterally changing them, NASA argued, intruded on the agency's prerogative to designate the type of products or services that it buys. NASA said that continuing to change codes could conceivably lead to violations of the CICA.

In June 1988, the General Services Administration (GSA) also requested that the CBD editorial office staff permit the publication of synopses under the classifications chosen by their contracting officers. GSA cited Comptroller General Decision B-228744¹ as one reason for their request. In that decision, the Comptroller General ruled that an agency that misclassifies an advertisement in the CBD has failed to effectively notify firms most likely to respond to a pending procurement, and thus has violated the CICA requirements to obtain full and open competition. In a prior report, we concluded that misclassifications in the CBD reduce the assurance that all potential responsible sources were given an opportunity to compete.²

¹Frank Thatcher Associates, Inc., B-228744 Nov. 12, 1987, 87-2 CPD paragraph 480

²Procurement: Better Compliance with the Competition in Contracting Act is Needed (GAO/NSIAD 87-145, Aug. 1987), p. 36.

In the summer of 1988, Department of Commerce officials consulted with the Civilian Agency Acquisition Council and with the Defense Acquisition Regulatory Council to discuss changes to synopses made by the CBD staff. After consulting with the Councils, Commerce said that because the contracting officer is responsible for answering protests arising from disputed classifications of CBD synopses, the CBD staff would no longer change classification codes selected by contractor officers, even when they appeared to be erroneous. This action was made effective September 1, 1988. As a result, decisions on CBD classification codes are now the primary responsibility of the contracting officers.

RESULTS OF REVIEW OF RECENT CBD CLASSIFICATIONS

Our review of 2,413 proposed procurement notices in four editions of the CBD showed that about 6 percent, or 137 (including the 4 that prompted the Subcommittee's request), were misclassified. As shown in table I.1, in reviewing classifications in four editions of the CBD we found that service-related synopses were more commonly misclassified than were supply-related synopses.

Table I.1:
Misclassifications in Four Editions of the CBD
(As Confirmed by the CBD Editorial Office Chief)

	<u>Total</u>	<u>Number misclassified</u>	<u>Percent misclassified</u>
Service synopses	963	106	11.0
Supply synopses	<u>1,450</u>	<u>31</u>	<u>2.1</u>
Total	2,413	137	5.7

In our review of the these synopses, we originally questioned the coding of 182 of them. To check our preliminary results, we referred these questionable synopses to the CBD editorial office chief, who has 20 years of experience with classifications and, until September 1, 1988, had authority to change codes.

The chief agreed that 137 of the 182 synopses we brought to his attention were misclassified. He said, however, that the remaining 45 synopses were actually correctly classified, although this was not apparent to us on the basis of the FAR guidance. For example, the CBD staff has assigned particular FAR

codes to some synopses over a long period of time. These codes are now considered traditional classifications even though they are not obvious choices to someone who is not an experienced contracting officer. (Traditional codes are discussed in the following section.) Another reason for some codes being correct is that we were not aware of the strict match between the National Stock Number (NSN)³ of the item being procured and the FAR supply code for that item.

CAUSES OF MISCLASSIFICATION

While we did not do extensive audit work to identify causes of misclassification, several reasons are apparent from our analysis and from discussions with the CBD Editorial Office.

Traditional Classification Practices Not Used in Classifying Procurement Synopses

As already noted, some services are traditionally classified using codes that are not obvious on the basis of the FAR guidance. The convention of traditional classifications may not be necessarily known or used by newer, inexperienced contracting officers.

For example, tree planting services are traditionally included under code "S"--housekeeping services. The editorial office chief said that code "S" is used because it contains a subcategory for grounds maintenance that has been associated over the years with tree planting services. Similarly, the CBD editorial chief said that repair, maintenance, and installation services for air conditioning units and elevators are sometimes classified by inexperienced contracting officers under code "J"--maintenance and repair of equipment. The traditional code for these services is, however, "Z"--maintenance, repair, and alteration of real property--because both air conditioning units and elevators are linked to real property.

Contracting Officers Assign a "Miscellaneous" Code

Code "X" for services and code "99" for supplies are often assigned when a more specific designation would provide a more accurate description of the goods or services required. Of the

³National Stock Numbers - A unique number, assigned by the General Services Administration, that catalogs a wide range of items by commodity, group, and class.

137 misclassified synopses, 43 appeared under codes "X" and "99." All four of the cases that prompted the Subcommittee's initial inquiry to us were classified as "Miscellaneous Services"--code "X."

According to the editorial office chief, two of the four synopses should have been code "S"--housekeeping services, which includes the following subcategories: utilities, building and grounds maintenance, food, custodial-janitorial, guard service, and garbage and trash collection. The first synopsis required a contractor to provide a community residential treatment facility for juvenile federal offenders. In addition to controlling the facility, the contractor was required to provide care and custody services, including subsistence and medical services, except the expense of hospital, surgical, prescriptions, and dental treatment. The second synopsis was for tree planting services.

The third synopsis, for software engineering support services, should have been classified under code "H"--expert and consultant services. The fourth synopsis, whose title ("A-E Services for detailed engineering evaluation of water balance for entire nuclear plant") indicated the proper classification, should have been coded as "R"--architect-engineer services.

FAR Code Classifications Out of Date

Misclassifications also occur because the FAR codes used in the CBD, which the editorial office chief said have not been updated since 1973, no longer precisely classify some of the services the government is now procuring. For example, a federal agency needed a contractor to undertake some of its personnel administration functions, usually an in-house effort. Using its own resources, the contractor was to prepare job analyses, job descriptions, evaluation statements, and other tasks for the agency. This work was to conform to agency as well as Office of Personnel Management requirements. The agency coded the synopsis "S"--housekeeping services. The CBD editorial office chief said that the synopsis should have been classified under code "H"--expert and consultant services.

EFFECTS OF MISCLASSIFICATIONS ON COMPETITION

Before the enactment of CICA, several contract awards made on the basis of misclassified notices were protested to us. We ruled that if there was a significant effort to obtain competition, if there was no deliberate attempt to exclude the protester from the competition, and if a reasonable price was obtained, then a contract award should be upheld even if some

potential bidders were unaware of a notice because it was misclassified.⁴

In later CG decisions, we noted that since CICA, a greater burden has been placed on agencies to take positive, effective steps towards ensuring that all responsible sources are permitted to compete. CICA's legislative history reveals that Congress established "full and open competition" as the newly required standard because of its "strong belie[f] that the procurement process should be open to all capable contractors who want to do business with the government."

In one protest, we decided in 1986 that an agency's failure to synopsise a pending procurement in the CBD in a manner reasonably expected to provide potential offerors with actual notice of pending procurement violates CICA's requirement to obtain full and open competition.⁵

In 1987, we sustained a protest arising from misclassification in the CBD because full and open competition was not achieved.⁶ We ruled that due to misclassification, the agency failed to effectively notify and solicit those firms most likely to respond to the solicitation, that is, those firms specializing in providing the type of services sought. The decision on this protest led to the FAR councils' request that resulted in contracting officers having primary responsibility for classifying notices in the CBD.

PRIVATE FIRMS AND MISCLASSIFICATIONS

According to Commerce, it may be more economical for interested parties to acquire the CBD through one of the 14 private firms that purchase the CBD in electronic form from Commerce. Also, since two of these firms provide key-word search and on-line capabilities, interested subscribers can possibly avoid misclassifications. We contacted three of the firms located in the Washington, D.C., area to determine how they deal with

⁴Hartridge Equipment Corporation, B-209061, Mar. 1, 1983, 83-1 CPD paragraph 207 and Blast Deflectors, Inc., B-212610, Jan. 9, 1984, 84-1 CPD paragraph 56.

⁵Reference Technology, Inc., B-222487, Aug. 4, 1986, 86-2 CPD paragraph 141.

⁶Frank Thatcher Associates, Inc., B-228744, Supra.

misclassified notices in the CBD and how misclassified notices affect the services they offer to subscribers.

Two of the firms, United Communications and Data Resources, send the CBD to subscribers via interactive on-line data bases. United Communications noted that personal computers with modems, FAX machines, or mainframes that dial out and retrieve data can be used to obtain the information.

To access notices in the data bases, key-word searching is used. Data Resources key-word searching capability allows the subscriber to enter a key-word that searches out the type of synopses one would like to receive. United Communications consults with subscribers to discuss their specific needs. From these discussions, an account representative develops a key-word list that captures all the contract opportunities of interest. When key-words are entered, the computer will send all synopses that apply, regardless of what code it is classified under.

The third firm, BidNet, said that they encounter misclassifications from time to time, but they are decreased because BidNet classifies all synopses using their own codes. BidNet provides subscribers with synopses that they have a specific interest in and sends the information to subscribers electronically or by mail.

When BidNet receives the electronic edition of CBD, it loads the information into its data base and assigns it product service or supply codes. BidNet's codes are slightly different from the FAR codes. A BidNet official said that misclassifications are decreased because all synopses in the CBD are reviewed by employees of BidNet and then given the appropriate BidNet code.

COMMERCE ACTIONS TO ADDRESS MISCLASSIFICATIONS

In October 1988, Commerce issued a pamphlet entitled "Guide for the Preparation and Submission of Synopses" to help contracting officers. This guide provides step-by-step instructions for preparing and submitting synopses in the 17-item format specified in the FAR. Of the 17 items, Commerce has placed emphasis on item 6, the classification code.

Although not required to do so, Commerce delivers oral presentations to contracting officers on how to submit notices to CBD. A Commerce official said that the CBD staff occasionally advises contracting officers when synopses are submitted with seemingly incorrect codes. When contracting officers are advised about questionable codings, it is their responsibility

either to resubmit the notice for republication under the code suggested by the CBD staff or to not resubmit the notice if they support the code as originally published. Unless the contracting officer specifies a change, such synopses are published as originally submitted because, as noted previously, the CBD staff is no longer authorized to change codings.

Commerce has prepared a draft proposal, which they plan to submit to the FAR Councils, that will replace the present FAR classification codes with the Federal Procurement Data System (FPDS) product and service codes. The FPDS codes are more detailed and descriptive than the FAR codes.

In our view, the FPDS codes should help decrease the incidences of contracting officers assigning several different codes, especially the miscellaneous code, to similar service-related notices. For example, in our review we observed that procurement notices for management studies appear under several codes: "S" for housekeeping services, "H" for expert and consultant services, and "X" for miscellaneous services. While the FAR codes do not include a code for management studies, the FPDS code "B"--Non-R&D special studies and analyses--includes 46 special study and analysis subcategories to aid in classifying notices for these services. These subcategories include air quality analysis, cost-benefit analysis, economic studies, defense studies, legal studies, natural resource studies, geophysical studies, and environmental studies and assessments. We believe that the use of these detailed descriptions would offer contractors a clearer guide to the services that the government is seeking.

FAR Codes for Services

<u>Code</u>	<u>Description</u>	<u>Code</u>	<u>Description</u>
A	Experimental, developmental, test, and basic and applied research work	O	Funeral and chaplain services
H	Expert and consultant services	P	Salvage services (services required to salvage property of any kind)
J	Maintenance and repair of equipment	Q	Medical services
K	Modification, alteration, and rebuilding of equipment	R	Architect-engineer services
L	Technical representative services (e.g., services of technical specialists required to assist with the installation, checking, operation, and maintenance of complex equipment)	S	Housekeeping services, e.g., utilities (gas, electric, telephone, etc.), laundry and dry cleaning, custodial-janitorial, insect and rodent control, packing and crating, storage, garbage and trash collection, food, fueling, fire protection, building and grounds maintenance, care of remains-funerals, and guards
M	Operation and maintenance of Government-owned facility		
N	Installation of equipment (use code K if the contract also involves modification, alteration, or rebuilding of the equipment)		

APPENDIX II

APPENDIX II

<u>Code</u>	<u>Description</u>	<u>Code</u>	<u>Description</u>
T	Photographic, mapping, printing, and publication services, e.g., film processing, cataloging, charting, reproduction, technical writing, art, and printing	X	Miscellaneous (includes all services not covered by any other code)
U	Training	Y	Construction, i.e., new construction and major additions to existing buildings or facilities
V	Transportation services, e.g., passenger and cargo transportation, vessel charter, vessel operation, tug service, stevedoring, vehicle hire, and railway equipment charter	Z	Maintenance, repair, and alteration of real property, i.e., painting, building maintenance, alteration and repair, grounds maintenance and repair, roads maintenance and repair
W	Lease or rental, except transportation equipment, e.g., lease of ADP or EAM equipment, and lease of earth moving equipment		

FAR Codes for Supplies

<u>Code</u>	<u>Description</u>	<u>Code</u>	<u>Description</u>
10	Weapons	28	Engines, turbines, and components
11	Nuclear ordinance	29	Engine accessories
12	Fire control equipment	30	Mechanical power transmission equipment
13	Ammunition and explosives	31	Bearings
14	Guided missiles	32	Woodworking machinery and equipment
15	Aircraft and airframe structural components	34	Metalworking machinery
16	Aircraft components and accessories	35	Service and trade equipment
17	Aircraft launching, landing, and ground handling equipment	36	Special industry machinery
18	Space vehicles	37	Agricultural machinery and equipment
19	Ships, small craft, pontoons, and floating docks	38	Construction, mining, excavating, and highway maintenance equipment
20	Ship and marine equipment	39	Materials handling equipment
22	Railway equipment	40	Rope, cable, chain, and fittings
23	Motor vehicles, trailers, and cycles	41	Refrigeration and air conditioning equipment
24	Tractors	42	Fire fighting, rescue, and safety equipment
25	Vehicular equipment components	43	Pumps and compressors
26	Tires and tubes		

APPENDIX III

APPENDIX III

<u>Code</u>	<u>Description</u>	<u>Code</u>	<u>Description</u>
44	Furnace, steam plant, and drying equipment and nuclear reactors	62	Lighting fixtures and lamps
45	Plumbing, heating, and sanitation equipment	63	Alarm and signal systems
46	Water purification and sewage treatment equipment	65	Medical, dental, and veterinary equipment and supplies
47	Pipe, tubing, hose, and fittings	66	Instruments and laboratory equipment
48	Valves	67	Photographic equipment
49	Maintenance and repair shop equipment	68	Chemicals and chemical products
51	Hand tools	69	Training aids and devices
52	Measuring tools	70	General-purpose ADP equipment, software, supplies and support equipment
53	Hardware and abrasives	71	Furniture
54	Prefabricated structures and scaffolding	72	Household and commercial furnishings and appliances
55	Lumber, millwork, plywood, and veneer	73	Food preparation and serving equipment
56	Construction and building materials	74	Office machines
58	Communication equipment	75	Office supplies and devices
59	Electrical and electronic equipment components	76	Books, maps, and other publications
60	Fiber optics materials		
61	Electric wire, and power and distribution equipment		

<u>Code</u>	<u>Description</u>	<u>Code</u>	<u>Description</u>
77	Musical instruments, phonographs, and home-type radios	94	Nonmetallic crude materials
78	Recreational and athletic equipment	95	Metal bars, sheets, and shapes
79	Cleaning equipment and supplies	96	Ores, minerals, and their primary products
80	Brushes, paints, sealers, and adhesives	99	Miscellaneous
81	Containers, packaging, and packing supplies		
83	Textiles, leather, furs, apparel and shoe findings, tents, and flags		
84	Clothing, individual equipment, and insignia		
85	Toiletries		
87	Agricultural supplies		
88	Live animals		
89	Subsistence		
91	Fuels, lubricants, oils, and waxes		
93	Nonmetallic fabricated materials		

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